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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,768	12/12/2001	James Parr	57095-5010	6865

24574 7590 03/26/2003

JEFFER, MANGELS, BUTLER & MARMARO, LLP  
1900 AVENUE OF THE STARS, 7TH FLOOR  
LOS ANGELES, CA 90067

EXAMINER
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PULLIAM, AMY E

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 03/26/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/017,768

Applicant(s)

PARR ET AL.

Examiner

Amy E Pulliam

Art Unit

1615

-- **Th MAILING DATE of this communication appears on th cover sh et with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

Art Unit: 1615

## **DETAILED ACTION**

### ***Receipt of Papers***

Receipt is acknowledged of the Declaration, received by the Office March 4, 2002.

## **DETAILED ACTION**

Receipt is acknowledged of the Letter Regarding Fees and the Declaration, received March 8, 1999, the Information Disclosure Statement, received December 31, 1998, and the Request for a Corrected Filing Receipt, received February 18, 1999.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,089,269 to Noda et al.

Noda et al disclose a cosmetic composition or external treatment containing gelatin capsules enclosing a water/ oil emulsion, or an oil/ water emulsion (c 1, l 7-15). Noda et al further disclose that the composition may contain water soluble polymers such as cellulose, polyvinylpyrrolidone, and polyethylene glycol (c 8, l 45-55), as well as silicone oil (c 9, l 13). In the examples on columns 49 and 50, Noda et al teach the inclusion of L-ascorbic acid, at 2

Art Unit: 1615

weight percent. Applicant's claims are drawn to a composition, and the reference contains the same general ingredients as claimed by applicant. Further, on page 6 of the specification, applicant states that the claimed humectants form multiple hydrogen bonds with water molecules, and therefore create large negative deviations from Raoult's Law (p 6, l 8-12). Noda et al disclose the same polymers with humectant properties as claimed by applicant, and therefore these humectants would cause the same deviation from Raoult's Law.

Noda et al do not disclose all of the identical humectants and surfactants as claimed by applicant, nor do they claim the exact weight percents claimed by applicant, but Noda et al do allow for the inclusion of humectants and surfactants in general. It is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time the invention was made, based on the teachings of Noda et al, to make a cosmetic composition, comprising L-ascorbic acid, humectants, and surfactants, and to use humectants and surfactants which are well known to those skilled in the art. Further, it is the position of the examiner that the weight percents of the additives are limitations which would be routinely determined by one of ordinary skill in the art through minimal experimentation, as being suitable, absent the presentation of some unusual and/ or unexpected results. These results must be those that accrue from the specific limitations.

Applicant again discusses that Noda does not teach the percentages claimed by Applicant. The examiner reasserts her position set forth in the previous case, that although Noda does not necessarily teach modifying percentages, the reference does not teach percentages outside Applicant's claimed range, rather the reference does not specify the quantities to be

Art Unit: 1615

employed. It is suggested that Applicant provide a side by side comparison of the instant formulation and the formulation of Noda, in order to show patentable distinction, as well as to show the criticality of the claimed ranges. Furthermore, Applicant again asserts that Noda is not related to the process of stabilization of ascorbic acid, but again, this is unpersuasive, in light of Applicant's claims drawn to compositions and one method of making. For these reasons, the above rejection is again maintained.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy Pulliam, whose telephone number is (703) 308-4710. The examiner can normally be reached Monday to Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-1234.

March 24, 2003  
A. Pulliam  
Patent Examiner  
Tech Center 1600/ AU 1615

THURMAN K. PAGE  
SUPERVISOR/PATENT EXAMINER  
TECHNOLOGY CENTER 1600